

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FREDA D. SMITH,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security Administration,

Defendant.

CASE NO. C10-5063RBL

REPORT AND
RECOMMENDATION

Noted for October 15, 2010

This matter has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews v. Weber, 423 U.S. 261 (1976). Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of a final decision of the Commissioner of Social Security denying an application for social security benefits.

This matter is before the court on the parties' stipulated motion to remand the matter to the administration for further consideration. Doc. 18. The motion states that the parties stipulate that the case be reversed and remanded to the Commissioner of Social Security for further

1 administrative proceedings before an administrative law judge (ALJ) to conduct a new hearing and
2 make a new decision in regard to plaintiff's applications for disability insurance benefits and
3 supplemental security income payments under Titles II and XVI of the Social Security Act. On
4 remand, the ALJ should: 1) give consideration to, and discuss, the third party statement of plaintiff's
5 mother, Joan Newman; 2) give consideration to, and discuss, the severity of plaintiff's obesity and
6 fibromyalgia at steps two and three of the sequential evaluation; 3) give further consideration to, and
7 discuss, the opinion of Jerry Rusher, M.D.; and 4) obtain supplemental vocational expert testimony,
8 if necessary.

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10 The court notes that parties further stipulated that this remand be made pursuant to sentence
11 four of 42 U.S.C. § 405(g), and that plaintiff will be entitled to reasonable attorney fees and costs
12 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), upon proper request.

13 Based on the parties' agreement, the Court should remand the matter to the administrator
14 for further consideration as noted above.

15 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 672(b), the parties shall have
16 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
17 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
18 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P.
19 72(b), the clerk is directed to set the matter for consideration on **October 15, 2010**, as noted in
20 the caption.
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22 DATED at this 21st day of September, 2010.

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25 J. Richard Creatura
26 United States Magistrate Judge